IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.2.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.Nos.21813 of 2000 and 6320 of 2001

The Manager
Personnel and Industrial Relations
Nuclear Power Corporation
Madras Atomic Power Station
Kalpakkam
Kancheepuram District

.. Petitioner in W.P.21813/00 and 1st Respondent in WP.6320/01.

vs.

1.P.Chinnasamy .. 1st respondent in W.P.No.21813/00 & Petitioner,W.P.6320/01

2.Central Government Industrial Tribunal
-cum-Labour Court
City Civil Court Buildings
High Court
Madras.600 104

.. 2nd respondent in W.P.21813/2000

Central Government Industrial Tribunal
-cum-Labour Court
Sastri Bhavan, Nungambakkam
Chennai. .. 2nd respondent in W.P.6320/01

Writ Petition in W.P.No.21813/2000 filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari as stated therein and W.P.No.6320/2001 filed under Article 226 of the Constitution of India for the relief of writ of certiorarified mandamus as stated therein.

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For Petitioner in WP.No.21813/00
for 1st Respondent in WP.6320/01. : Mr.N.Jothi, assisted by
Mr.L.P.Shanmugasundaram

For 1st Respondent
in WP.No.21813/00 & for Petitioner
in WP.No.6320/01. : Mr. M. Gnanasekar

COMMON ORDER:

The management has filed the writ petition In W.P.No.21813/2000 for the relief of writ of certiorari to quash the award passed in I.D.No.1/2000, dated 22.11.2000 by the 2nd respondent.

2. Writ Petition in W.P.No.6320/2001 has been filed P.Chinnasamy,the workman for the relief of certiorarified mandamus, to call for the records relating to I.D.No.1/2000, dated 22.11.2000 on the file of the 2nd respondent, quash the same insofar as denying the half-backwages is concerned and consequently seeking for reinstatement with full back-wages and other benefits.

3. Since the issue involved in both the writ petitions relate to the award passed in I.D.No.1/2000, dated 22.11.2000 passed by the 2nd respondent, both the writ petitions are taken together and common order is being passed with the consent of the learned counsel for both sides.

4. W.P.No.21813/2000:- This writ petition has been filed against the award passed in I.D.No.1/2000, wherein the 2nd respondent has passed an order of reinstatement of the first respondent/workman by setting aside the order of removal from service passed by the disciplinary authority, as confirmed by the appellate authority and further directions to the management to reinstate the 1st respondent with some other benefits. However it is stated by the petitioner-management that no conditions have been stipulated by the 2nd respondent-tribunal that are to be followed. It is further stated that the 1st respondent-workman was appointed in the Madras Atomic Power Project (as it was called by then) during March 1971. At the time of appointment, he has made a declaration, in condition No.9 which reads thus:-

> "No person who has more than one wife living shall be eligible for appointment to Government Services. A declaration to the effect that you are unmarried or have only one wife living as the case maybe will have to be signed by you at the time of appointment (form enclosed). In the event of declaration being found to be incorrect after your appointment in this Department you will be liable to be dismissed form service."

Accepting this declaration, the 1st respondent-workman has also signed the order on 3.3.1971 and entered into service. As per this if any declaration

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is found to be incorrect, he could be removed from service. It is also stated that at the time of joining service in the family benefit details, he has declared that he got married to one Kalyani and also indicated the names of P.C.lakshmi as his daughter and P.C.Devan as his son born to him on 10.5.1973 and 15.7.1976 respectively. His entire family availed medical facilities provided by the management for all the family members. According to the petitioner, he suddenly introduced another woman by name Mrs.S.Muthu and further introduced the names of C.Premavathy, C.Thilakavathi, as daughters and C.Magesh as his son. These two daughters and a son were born through the second wife S.Muthu. Thus the 1st respondent-workman had performed bigamous marriage while his first wife Mrs.Kalyani was alive. On the basis of the information that the 1st respondent has contracted the second marriage when the first wife was alive and when the said marriage was subsisting, the petitioner issued a charge sheet to the 1st respondent. A domestic enquiry was conducted by the enquiry officer by absorbing all the procedures. The findings of the enquiry officer stood against the 1st respondent. On perusal of the record it was further found that the 1st respondent nominated his first wife Kalyani as primary nominee, and for the purpose of L.T.C. and travelling allowance also, he had declared Mrs.S.Kalyani as his wife, P.C.Lakshmi as his daughter and Master Devan as his son. He had further declared that the daughter and son are his legitimate children born to his legally married wife Kalyani. While so, the 1st respondent had submitted a totally different nomination for Death-cum-Retirement Gratuity declaring one Mrs.Muthu as his wife the primary nominee and introduced P.C.Lashmi and P.C.Devan as alternative nominees. It is also stated that the 1st respondent had admitted the 2nd marriage and the birth of the children through her. Therefore, on the basis of the materials and records available, the enquiry officer found the 1st respondent-workman was guilty of all charges. Consequently, the disciplinary authority passed an order on 10.10.1998, after observing all the formalities and fully adopting the principles of natural justice, removing him from service. An appeal was filed by the 1st respondent to the appellate authority which also confirmed the order of removal. Thereafter, it is submitted that he raised an industrial dispute in I.D.No.1/2000 before the 2nd respondent, who passed an award on 22.11.2000, which is impugned in this writ petition in W.P.No.21813/2000.

5. It is seen from the impugned award passed by the 2nd respondent-tribunal that the enquiry was very fair and proper and there was no infirmity or any violation in the manner in which the same was conducted. Thereafter, the 2nd respondent ultimately passed the impugned award directing reinstatement of the 1st respondent in service with some conditions imposed by the petitioner-management on only one ground, namely, the Industrial Employment (Standing Orders) Act 1946 (hereinafter called as the Act) which contains the Rules framed by the Central Government which is also called as the Industrial Employment (Standing Orders Central Rules 1946, (hereinafter called as the Rules) does not provide the bigamous marriage or getting children through such a marriage

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as a misconduct. In short, the 2nd respondent-tribunal has held that the act of marrying and getting children through bigamous marriage during the lifetime of the first wife will not amount to any act or omissions so as to treat the same as a misconduct in terms of the standing orders/rules.

6. Learned counsel for the petitioner-management submitted that though the Standing Orders as stated by the second respondent-tribunal would not specify the bigamous marriage as a misconduct, it is a misconduct and a serious offence in general law. The provisions of the Hindu Marriage Act, 1955 stipulate that bigamous marriage is prohibited. Moreover, he also referred to the Criminal Procedure Code, Chapter XIV relating the prosecution for offences against marriage under Section 198. Learned counsel has also referred to the charge memo dated 18.6.1996, which reads thus:-

> "ARTICLE I
>
> That the said Shri P.Chinnaswamy, while functioning as Tradesman had married another woman viz., Smt. Muthu while his first wife Smt.Kalyani was living. As per the details of Master Medical Card, two children were born to him out of his first wife, the first child in the year 1973 and the other on 15.7.1976. As per the details given by him later on three children were born to him through Smt. Muthu, his 2nd wife with their dates of birth as 29.5.74, 3.8.76 and 20.12.78.
>
> That the said Shri P.Chinnaswamy by marrying another woman while his first is alive has acted in a manner i.e., unbecoming of a Corporation employee.
>
> ARTICLE II
>
> That the said Shri P.Chinnaswamy while functioning as Tradesman in MAPS suppressed the facts of his 2nd marriage with another woman viz., Muthu and begetting following children while his first wife was also living.
>
> 1.C.Premavathy Daughter
> 2. C.Thilagavathy -do-
> 3. C.Makesh Son
>
> Prior to introduction of CHS Scheme in DAE hospital i.e., on 16.5.85 he applied for availing medical facilities for these children whose names were included in the Master card by deliberately excluding the name of his second wife Smt. Muthu. Later on when CHSS was introduced in the DAE hospital, he applied for inclusion of the following persons as his dependants who are being the first wife and children born out of

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her:-

1.P.Chinnaswamy	Self	15.6.45
2.Smt.Kalyani	wife	43 years
3.P.C.Lakshmi	daughter	10.5.73
4.P.C.Devan	son	15.7.76

That the said Shri P.Chinnaswamy has by suppressing the facts of his 2nd marriage with another woman and begetting children has acted in a manner that is unbecoming of a Corporation employee.

ARTICLE III:

That the said Shri P.Chinnaswamy while functioning as Tradesman in MAPS had submitted a nomination dated 23.7.73 declaring Smt.Kalyani, his 1st wife as primary nominee for the purpose of Provident Fund and had included her as a family member for the purpose of LTC/TA. For availing medical facility at the first instance he declared Smt.Kalyani as his wife and P.C.Lakshmi as his daughter. Subsequently for availing medical facilities, he included Ms.Thilagavathy, Ms.Premavathy and Master Makesh by declaring them as his legitimate children although they were born through his second wife. During July 1987 he submitted a nomination dated 14.7.87 for Death -cum- Retirement Gratuity declaring Smt.Muthu as his wife and as primary nominee and C.Premavathy, C.Thilagavathy, C.Makesh as alternative nominees. Later, when he was absorbed in NPCIL, he gave nomination in favour of his 2nd wife and children born out of 2nd wife leaving behind the first wife and children born out of 1st wife."

It is further submitted that in the letter dated 26.3.1997 written by the 1st respondent-workman to the Department, wherein he has categorically admitted the offence committed by him and pleads for forgiveness based on his past experience in the petitioner-department. Learned counsel for the petitioner has also referred to the claim statement made in I.D.No.1/2000, wherein the 1st respondent has stated that he has not committed any serious misconduct like misappropriation or corruption or embezzlement but suo motu action had been taken against the him in this case. The learned counsel for the petitioner has stated that this contention of the 1st respondent-workman that action has been taken against him as per the sweet will and pleasure of the petitioner-management without any material cannot be considered at all for he has violated the rules of the general law by contracting a second marriage. Therefore, according to the learned counsel for the petitioner, on the basis of the Standing Orders and the general law, action has been taken against the 1st respondent and there is

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no error committed by the disciplinary authority in passing the order of removal against the 1st respondent. It is further stated by the learned counsel that on the basis of the admissions made by the 1st respondent and the request for lesser punishment, the 2nd respondent-tribunal has condoned the unbecoming act of the 1st respondent and passed an order in his favour. However, learned counsel for the petitioner reiterates that while accepting that the enquiry was fair and also that there was clear admission on the part of the 1st respondent in respect of 2nd marriage as contracted by him, the impugned award has been passed mechanically on the ground that there was no clear provision in the Standing Orders treating the bigamous marriage as misconduct. On that basis, it is his case that the same should not be a ground for the 2nd respondent-tribunal to have the order of removal of the 1st respondent-workman set aside and that it is excessive and contrary to the gravity of the misconduct. Therefore, learned counsel assails the impugned award of the 2nd respondent-tribunal on the ground that it has not applied its mind and the provisions of the general law. Learned counsel further added that it would only put a premium on the offences of this nature to be committed by persons. He has also referred to the fact that a person who commits murder should not rely upon the provisions of the Standing Orders to say that it is not one of the misconduct as enumerated in the Standing Orders thereby, he could be made to say that he should be reinstated in service even after committing murder. Learned counsel has also referred to the provisions of the Constitution of India, Part IV-A, Article 51-A wherein the fundamental duties have been enumerated. It is further stated by the learned counsel that the Standing Orders cannot be taken as an exhaustive one but it is only an illustrating provision wherein it is only used as a model conduct for the workers' behaviour in general. Whereas that cannot be taken as a complete and exhaustive code for all the behaviour and conduct of the workers. It is also stated by him that the 2nd respondent-tribunal ought not to have gone beyond its jurisdiction and decided the quantum of punishment imposed by the petitioner-management. Moreover, the reasons for interfering with the detailed order passed by the petitioner-management has not been given by the 2nd respondent-tribunal. Therefore, it is his contention that the impugned award challenged in these writ petitions should be set aside and the order of removal passed by the petitioner-management should be upheld.

7. In reply to the submissions put forth by the learned counsel for the petitioner, learned counsel for the 1st respondent in W.P.No.21813/2000 and for the petitioner in W.P.No.6320/2001 submitted as follows:-

According to him, the 1st respondent-workman joined the Department of Atomic Energy as Helper-A in1971 which was then a part of Central Government, though the Department of Atomic Energy was converted into a statutory corporation, called Nuclear Power Corporation (NPC) and came into force from 17.9.1994. According to the learned counsel for the first respondent (petitioner in W.P.No.6320/2001), though the bigamous marriage is admitted, as long as it has not been enumerated as a

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misconduct in the Standing Orders of the petitioner-management, the same cannot be accepted as a misconduct and so the order of removal passed by the petitioner-management on the basis of misconduct is invalid and cannot be accepted. For that, learned counsel has referred to various decisions:-

(1) 1984(1)LLJ 16 Glaxo Lab.(I) Ltd. v. Labour court, Meerut & Ors.
(2) 1984(3) SCC 316 A.L.Kalra v. Project and Equipment Corpn.
(3) 1990(II0) LLJ 96 S.Alamelu v. S.E. Elecy System
(4) 1995(I) LLJ 931 J.Dhanraj v. T.N.E.B. & ors.
(5) 11.4.1990 Order copy of T.A.No.1322/1989 (W.P. No.14665/88) passed by the Tamil Nadu Administrative Tribunal
(6) 1998 (Vol.93)FJR 147 T.N.E.B. v. T.N.E.Employees (Mad.)

8. Learned counsel for the 1st respondent-workman also submitted that this fact of misconduct not being enumerated in the Standing Orders has been elaborately discussed by the 2nd respondent-tribunal while deciding the case in favour of the 1st respondent-workman. It is further pointed out by him that only on the basis of the said decisions referred to above, the 2nd respondent-tribunal has passed the impugned award setting aside the order of removal passed by the petitioner-management. Therefore, according to him, adequate reasons have been given by the 2nd respondent-tribunal before setting aside the order of removal of the 1st respondent. It is further submitted that the petitioner-management ought not to have initiated disciplinary proceedings at all, when the same has not been enumerated as a misconduct in the Standing Orders. It is his further submission that on facts, the first wife was deserted as early as 1976 and there has been no complaint from her so as to initiate departmental proceedings as against him, as has been done in this case. Therefore, in the absence of any complaint from any quarters, particularly from his first wife, the action taken by the petitioner-management is highly unwarranted and no enquiry ought to have been conducted on that basis. According to him, the first wife of the 1st respondent-workman has not taken steps in any of the forum available to her against him. Therefore, when that has not been done by the affected party concerned, it was not necessary for the petitioner-management to initiate any such action against the 1st respondent. Though the 1st respondent-workman has sought for the same relief of reinstatement with full backwages in W.P.No.6320/2001, he only wants to confine himself to the limited prayer of confirming the same award for the reason that during the pendency of the said writ petition, the workman has left the services of the petitioner-management.

9. In reply to the submissions made by the learned counsel for the 1st respondent-workman learned counsel for the petitioner-management makes the reply as follows:-

It is not correct on the part of the learned counsel for the 1st respondent-workman to state that the petitioner-management did not receive

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any complaint from his first wife. He has referred to the original complaint given by the 1st wife of the 1st respondent-workman to the petitioner-management. According to the counsel, only on the basis of the said complaint, action was initiated by the petitioner-management against the workman. Therefore, it is not correct to state that the petitioner-management has suo motu taken action against the 1st respondent. Moreover, according to the learned counsel for the petitioner-management, though contracting a second marriage has not been enumerated in the Standing Orders, it cannot be construed that the same itself is not a misconduct and thereby no action need be taken for such an offence being committed by a person or workman. He has also brought to the notice of this court the declaration made by the 1st respondent-workman at the time of his entering into service, namely condition No.9, which is extracted supra. Therefore, it is his case that the rationale behind the impugned award passed by the 2nd respondent-tribunal cannot stand the legal scrutiny and therefore the same is liable to be set aside and no relief could be granted to the 1st respondent-workman as given in the award.

10. Learned counsel for the 1st respondent-workman has submitted that the impugned award passed by the 2nd respondent-tribunal is well within law and there is no infirmity or illegality in the same warranting this court to set aside the same.

11. I have given my careful consideration to the submissions made by both the learned counsel and the judgments referred to by them.

12. The only point that is to be decided in these writ petitions is whether any disciplinary action could be taken in respect of an act not enumerated as an act of misconduct under the certified Standing Orders.

13. In Glaxo Laboratories (I)Ltd. v. Labour Court, Meerut & ors., 1984 (I) LLJ 16 (supra) this question was considered by the Hon'ble Supreme Court and in para 20 of the said judgment, the Hon'ble Supreme Court held as follows:-

> "20. It was next contended that while misconduct is enumerated in S.O.22, the punishment is prescribed in S.O.23, and the expression 'misconduct' in S.O.23 would comprehend any misconduct irrespective of the fact whether it is enumerated in S.O.22 or not. The preamble of S.O.23 reads as under:
>
> "23(a) Any workman who is adjudged by the manager on examination of the workman, if present, and of the facts to be guilty of misconduct is liable to be ..."
>
> The submission is that the expression 'misconduct' under S.O.23 is not qualified as the one set out in S.O.22 and therefore, any other act of omission or commission which would per se be misconduct would be

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punishable under S.O.23 irrespective of the fact whether it finds its enumeration in S.O.22. The Act makes it obligatory to frame standing orders and get them certified. S.3(2) requires the employers in an industrial establishment while preparing draft standing orders to make provision in such draft for every matter set out in the Schedule which maybe applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. Item 9 of the Schedule provides 'suspension or dismissal for misconduct, and acts or omissions which constitute misconduct'. It is therefore, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must therefore, know in advance which act or omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the face of the statutory provision it would be difficult to entertain the submission that some other act or omission which may be misconduct though not provided for in the standing order would be punishable under standing order 23. Upon a harmonious construction, the expression 'misconduct' in S.O.23 must refer to those acts of omission or commission which constitute misconduct as enumerated in standing order 22 and none else. However, in this connection, Mr.Shanti Bhushan drew our to Mahendra Singh Dhantwal v. Hindustan Motors Ltd. & Ors. (1976 II L.L.J 259). In that case in a second round of litigation between the parties the Industrial Tribunal set aside the order of dismissal of the workmen and ordered reinstatement with full back wages. In a writ petition filed by the Company under Art.226 of the Constitution, a learned Single Judge of the High Court declined to interfere with the award holding that 'the reason might have been the old reason of dismissal' and that the "circumstances relied on by the Tribunal cannot be characterised as unreasonable." The Company carried the matter to the Division Bench of the High Court which accepted the appeal observing that unless contravention of S.33 of the Industrial Disputes Act is established, the Industrial Tribunal would have no jurisdiction to entertain an application under S.33A. In terms it was held that unless it is established that there has been discharge for

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misconduct, the Industrial Tribunal had no jurisdiction to set aside the order of termination in an application under S.33A. In the appeal by certificate granted by the High Court, workman contended that S.33 may be contravened in varieties of ways and the only question that need to be examined is whether there was a contravention by the employer in that it did not make any application to the Tribunal for the approval of the order of termination of service of the workman. It is in this context that while allowing the appeal of the workman this Court observed as under:

"Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing orders, it may still be a misconduct, in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action. Ordinarily, the standing orders may limit the concept but not invariably so."

Relying on these observations, Mr.Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer may take appropriate action. This observation cannot be viewed divorced from the facts of the case. What stared in the face of the court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under S.33A was not maintainable. It is in this context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. The law will have to move two centuries backward to accept such a construction. But it is not necessary to go so far because in Salem Erode Electricity Distribution Co. Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees Union (1966-I L.L.J. 443), this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under

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an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to the employees before they accept the employment. If such is the object, no vague undefined notion about any act may be innocuous which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection, we may also refer to Western India Match Company Ltd. v. Workmen (1973-II L.L.J. 403), in which this Court held that any condition of service if inconsistent with certified standing orders, the same would not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing. Says the Court:

"In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith."

Lastly we may refer to Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd. 1970(20) I.F. & L.R., 243. This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in Rohtak Hissar District Electricity Supply Co.Ltd. v. State of Uttar Pradesh & Ors. (1966-II L.L.J. 330), the Court held that everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account a varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less a misconduct not strictly falling within the enumerated misconduct

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in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr.Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O.22 can be punished under S.O.23 must be rejected."

14. In A.L.Kalra v. Project and Equipment Corpn. 1984(3)SCC 316, the Hon'ble Supreme Court has held that acts of misconduct must be precisely and specifically stated in the rules or standing orders and it cannot be left to be interpreted ex post facto by the management.

15. This Court in S.Alamelu v. S.E. Elecy System , 1990(II) LLJ 96, held in para 6, as follows:-

"6. One of us (Nainar Sundaram, J.) in S.V.Angappan and others v. The Tamilnadu Electricity Board, Rep., by its Secretary, Madras 2 (W.P.No.5105 of 1980), order dated 6th January, 1987),adverted to the ratio of the Supreme Court in Glaxo Lab (I)Ltd. v. Labour Court, Meerut and others (supra) and opined that unless the transgression of any of the Regulations is also enumerated as misconduct in the Standing Orders, it will not attract disciplinary action in respect of such transgression. It is true Regulation 25(2) as such sets forth an embargo on a woman employee contracting a marriage with any person, who has a wife living, without first obtaining the permission of the Board. It is admitted that the Regulations do not by themselves say that a violation of Regulation 25(2) would amount to misconduct, attracting disciplinary action. Even if such a provision has been made, the Standing Orders under the Act having got formulated and certified and they having not provided for such a misconduct, the Regulations would not prevail and could not be invoked to take disciplinary action. That is the result of sanctity annexed to the Act and the Rules, and the Standing Orders under them, and their overriding effect on other service Rules and Regulations. The learned single Judge, with due respect to him, in our view, has not appreciated the implications of the Certified Standing Orders under the Act and their overriding effect from a proper perspective. The learned single Judge took note of the observations in Shri Rasiklal Vaghjibhai Patel v. Ahmedabad Municipal Corporation and another (1985-I-LLJ-527) as saying that there could be an action either under the Service Regulations or Standing Orders. With due respect to the learned single Judge, we must point out that the said

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pronouncement has not at all dealt with the question of the overriding effect of the Certified Standing Orders under the Act over a Regulation of the present nature. The Supreme Court in that case, was discountenancing the view of the High Court that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations, yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same."

16. Yet another Division Bench of this court in J. Dhanaraj and T.N.E.B. & Others held in para 9 and 10 as follows:

"Para:9. No doubt, the proposition laid down in that case appears to support the respondents herein. But it is explained and distinguished by the Supreme Court in Glaxo Lab (I) Ltd's case (cited supra). The later Judgment has taken note of the earlier Judgment. Apart from that in so far as this Court is concerned, there is already a Division Bench on the said point and the Division Bench has considered the Regulations and the Standing Orders which are under our consideration in the present case. The ruling of the Division Bench will certainly govern the present case also. As we are in agreement with the view taken by the Division Bench, we are not in a position to accept the contention raised by learned counsel for the respondents.

Para 10: Learned counsel for the respondents invites our attention to the decision in M.R.Savant V. G.M. Mather & Platt (I) Ltd. & Others (1992 II LLJ 394) rendered by the Bombay High Court. After referring to the two Judgments of the Supreme Court, the Bombay High Court in that decision held that it would not go into the controversy and by steering clear of the controversy, the Court assumed for the purpose of that case that the law laid down by the Supreme Court was that the Standing Orders must specifically enumerated any act before it can be termed as a misconduct. Thus, the Bombay High Court proceeded on the footing that the law laid down by the later Judgment of the Supreme Court would hold the field."

17. In Tamil Nadu Electricity Board v. Central Organisation of Tamil Nadu Electricity Employees and Another(1988 FJR 147) a Division Bench of this Court held as follows:

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"The apex court, in Glaxo Laboratories (I) Ltd. v. Labour Court, (1984) 64 FJR 16, has held that a non-enumerated misconduct cannot form the subject-matter of a disciplinary action. Following the said view, in U.P. State Electricity Board v. Hari Shankar Jain, (1978) II LLJ 399 (sic), it has been held that without amendment to the certified standing orders and by including the various misconducts enumerated in the conduct regulations as applicable to workmen covered by the standing orders would really by passing the provisions for amendment to the certified standing orders prescribed under section 10 of the Industrial Employment (Standing Orders) Act. In that view of the matter, we have no hesitation to conclude that the circular now issued is against the provisions of the Act. Therefore, we are in conformity with the view of the learned single judge that a service regulation cannot be replaced by a circular or a memorandum, introducing series of misconducts not enumerated in the standing orders. So as to ensure safeguard to the workmen they should know what are the service conditions and what constitutes misconduct, at the time of entry into service. In the standing orders, as many as 36 misconducts are enumerated. To read something else to that, it can be done only by way of restoring to an amendment to the certified standing orders, under section 10 of the Act, which gives ample opportunity for the employees to have their say and to take the matter finality in the form of judicial review. What is not contemplated as a service condition when entered into service cannot be upset or re-introduced by way of memorandum, which has no statutory value, unless it assumes a statutory significance by way of an amendment in the manner provided by law. Therefore, the decisions, which have no binding impact by virtue of the order of the apex court cannot be a ground to upset the findings of the learned single judge. Since the order of the learned single judge based on two decisions of the Division Bench of this court in S. Alamelu v. Superintending Engineer, South Arcot Electricity System, (1990) II LLJ 96, and Dhanaraj v. T.N.E.B., (1995) 64 FJR 16, which decisions are based on the view of the Supreme Court in Glaxo Laboratories (I) Ltd. v. Labour Court, (1984) I LLJ 16, we have no other option than to confirm the order of the learned single judge, which consequently leads to the dismissal of the appeal.

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Accordingly, the writ appeal is dismissed with cost of Rs.2,000/- (Rupees two thousand only) payable to respondent No.1."

18. Therefore, I am bound by the judgments of the apex court and the Division Bench of this Court which decided the issue already that no disciplinary action could be taken against an employee for misconduct if such acts are not enumerated in the misconduct under the standing orders.

19. In the present case it was admitted by the petitioner/respondent that bigamy is not enumerated as a misconduct in the standing orders holding the field. It is admitted by him that only for the misconduct of committing bigamy, the respondent workmen was proceeded with and was removed from service ultimately. The Labour Court has correctly applied the principles and the law laid down by the Apex Court and this Court and rightly held that the 1st respondent-workman is entitled to reinstatement with conditions.

20. Therefore, I am unable to accept the contentions of the learned counsel for the petitioner-management and the writ petition filed by the management is liable to dismissed for devoid of merits. Accordingly, W.P.No.21813/2000 filed by the petitioner-management is dismissed and W.P.No.6320/2001 filed by the 1st respondent-workman is also dismissed as the learned counsel for the petitioner workman prayed for only the confirmation of award as given by the labour Court. However, there will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks/smi

To
1.The Manager
Public and Industrial Relations
Nuclear Power Corporation
Madras Atomic Power Station
Kalpakkam
Kancheepuram District

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2. The Central Government Industrial Tribunal
-cum-Labour Court
Sastri Bhavan, Nungambakkam
Chennai.

3. The Central Government Industrial cum
Labour Court, City Civil Buildings,
High Court, Madras 104.

+ 3 CCs to Mr. M. Gnanasekar, Advocate SR NO 7869, 7872

W.Ps.21813/00 & 6320/01.
21.2.06

jrg(co)
gp/6/3

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